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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN L. OLIVER,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A04-0610-CR-558

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT

The Honorable Chris D. Monroe, Judge

Cause No. 03D01-0410-FB-1726

June 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Steven Oliver appeals the trial court's denial of his request for 298 days of pretrial credit time. We affirm.

Issue

Oliver raises one issue, which we restate as whether the trial court properly denied his request for 298 days of pretrial credit.

Facts

On April 6, 2004, Oliver committed Class D felony attempted theft, Class A misdemeanor possession of marijuana, and Class A misdemeanor driving while suspended (collectively "theft charges"). On July 6, 2005, Oliver was found guilty on all counts including an habitual offender enhancement. On August 3, 2005, the trial court sentenced Oliver to a total of nine and one half years. Because Oliver was incarcerated for 300 days, beginning on October 9, 2004, while awaiting trial, he was awarded pretrial credit for 600 days.

On October 13, 2004, Oliver was charged with Class B felony dealing in methamphetamine and Class D felony maintaining an illegal drug lab for an incident that occurred on October 9, 2004 (collectively "methamphetamine charges"). On June 12, 2006, Oliver pled guilty to Class D felony maintaining an illegal drug lab and the State agreed to dismiss the Class B felony dealing in methamphetamine charge. On August 1, 2006, a sentencing hearing was held. The trial court sentenced Oliver to three years and

ordered this sentence to be served consecutive to the sentence on the theft charges.¹ Oliver argued that he was entitled to an additional 298 days of pretrial credit from October 9, 2004, until he was sentenced on the theft charges on August 3, 2005. The trial court rejected this argument and found that all of the “credit days” had been applied to the sentence on the theft charges. App. p. 109.

On September 27, 2006, Oliver petitioned for permission to file a belated appeal. This petition was granted, and Oliver now appeals the denial of his request for an additional 298 days of credit time.

Analysis²

Oliver argues that he was entitled to 298 days of credit for the time he awaited trial on the methamphetamine charges in addition to the 300 days he received for the same time period that he awaited trial on the theft charges. Oliver argues that he is entitled to “double credit” because the record is insufficient to establish that consecutive sentences were mandatory and that the trial court, in its discretion, imposed consecutive sentences. See Ind. Code § 35-50-1-2. Even if the record is insufficient to establish that consecutive sentences were mandatory, we reject Oliver’s argument.

In Bennett v. State, 802 N.E.2d 919, 922 (Ind. 2004), the defendant, who was sentenced to consecutive sentences pursuant to a plea agreement, argued that the trial court improperly denied him pretrial credit. Our supreme court rejected that argument,

¹ Both of these sentences were substantially suspended.

² The State asserts that Oliver did not include the pre-sentence investigation report (“PSI”) in his appendix and that any arguments related to such should be waived. We point out, however, that Oliver did include the PSI in an envelope attached to the back page of his appendix.

holding that “‘where a defendant is confined during the same time period for multiple offenses for which he is convicted and sentenced to consecutive terms, credit time is applied against the aggregate sentence, not against each individual sentence.’” Bennett, 802 N.E.2d at 922 (quoting Lanham v. State, 540 N.E.2d 612, 613 (Ind. Ct. App. 1989)); see also Shane v. State, 716 N.E.2d 391, 400 (Ind. 1999).

In Lanham, we addressed an argument similar to the one Oliver makes regarding discretionary, instead of mandatory, consecutive sentences. Lanham, 540 N.E.2d at 614. In that case, we concluded:

the issue is not whether defendant may or may not anticipate receiving consecutive sentences, but whether defendant may be assured how his credit time will be applied for any given outcome. Our cases remove any doubt with respect to how credit time will be applied. Lanham should not have expected to received [sic] “double” credit; therefore, no credit time was “retroactively removed.”

Id. In another case in which we concluded that a defendant was not entitled to “double credit,” we observed that awarding “‘full credit’ on each sentence, when the sentences must be served consecutively, enables a defendant to serve part of his sentences concurrently, a result the legislature could not have intended.” Diedrich v. State, 744 N.E.2d 1004, 1006 (Ind. Ct. App. 2001). This reasoning applies regardless of whether consecutive sentences are mandatory or discretionary. Accordingly, because Oliver already received credit for the 300 days he was incarcerated and awaiting sentencing on the theft charges, he is not entitled to additional credit for the 298 days he was incarcerated prior to trial on the methamphetamine charges.

Conclusion

The trial court properly denied Oliver's request for an additional 298 days of pretrial credit time on the methamphetamine charges. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.